IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1694 OF 2005
IN
SECOND APPEAL NO.110 OF 2003

Moreshwar Gopal Dahiwadkar ...Applicant

vs.

Gopal Balwant Dahiwadkar
(since deceased through L.Rs.) ...Respondents

Mr.V.G.Mujumdar for the Applicant
Mr.Sandeep Bhagwat for the Respondent Nos.1 to 6
Mr.G.S.Godbole for Respondent No.8
Mr.K.V.Tembe for Respondent No.12

CORAM: A.S.OKA, J.
DATED: AUGUST 8, 2006.

P.C.:

1. This Application is filed by the Respondent No.2 in the Second Appeal praying that the name of the Respondent No.7 in the Appeal be deleted from the Memorandum of Appeal. The submission in support of the Application is that the Respondent No.7 was neither a party to the suit nor to the Appeal before the District Court and therefore, the Respondent No.7 cannot be impleaded as a party. Shri Tembe, learned Counsel for the Respondent No.7 submitted that on 8th April 2003, leave to amend Memorandum of Appeal was granted for impleading the Respondent No.7 as a party. The said order was not objected to by any of the contesting parties. He submitted that if anyone had objection for impleading the Respondent No.7, the grievance would have been made on 8th April 2003.

2. I have considered the submissions. Perusal of order dated 8th April 2003 shows that the contesting parties to the Appeal intended to settle the dispute and in fact the order records that the Advocates appearing for the contesting parties left the matter to the Court to pass an order on invitation. In the context of the said prayer made by the Advocates for the parties, the Respondent No.7 was permitted to be added as a party. Second Appeal was disposed of by order dated 8th April 2003. The said order was objected to by the Respondent No.7 by filing the Civil Application No.1283 of 2003. The said application has been allowed by this Court on 1st April 2005. The main ground in the Application was that the said Respondent was not heard before passing final order in the Appeal.

3. Perusal of the order dated 8th April 2003 shows that the Respondent No.7 was permitted to be added as Respondent as a complete settlement of the property dispute was contemplated. An order was passed which had result of settling the entire dispute. That order has been recalled at the instance of the Respondent No.7.

4. The Respondent No.7 in the Second Appeal is admittedly not a party either in the Trial Court or in the first Appellate Court. Hence, name of the Respondent No.7 which

was included only for the purposes of overall settlement of the dispute will have to be ordered to be deleted without prejudice to the right of the Respondent No.7 to apply for impleading her as a party.

5. Hence, Application is allowed in terms of prayer clause (a). However, it will be open for the Respondent no.7 to take out application for impleading herself as a party to the Appeal. Such Application may be contested by other parties on all permissible grounds.

Judge.